



Comptroller General
of the United States

Washington, D.C. 20548

B-208159.15

February 3, 1989

The Honorable Carl Levin
Chairman, Subcommittee on
Oversight of Government Management
Committee on Governmental Affairs
United States Senate

Dear Mr. Chairman:

This is in response to your letter dated November 10, 1988, asking a number of questions concerning our bid protest function.

You requested various categories of statistical information for each year since the bid protest provisions of the Competition in Contracting Act of 1984 (CICA), 31 U.S.C. § 3551-3556 (Supp. IV 1986), became effective on January 15, 1985. Our responses to your questions follow:

1. How many CICA bid protests were filed with the GAO?^{1/}

1985: 1,760

1986: 2,552

1987: 2,622

1988: 2,639

^{1/} The response to this question and to all that follow are on a fiscal year basis. Since CICA did not become effective until January 15, 1985, the CICA statistics for that year reflect only approximately three-quarters of a year. Because 1985 was a change-over year, our statistical data is incomplete with respect to most of the other questions which you have asked; therefore, we have not included 1985 in the remainder of our answers. We have also omitted 1989 because we only have limited data available for approximately one-quarter of the year, which does not permit us to provide meaningful statistical information.

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2. How many contract awards were stayed pursuant to Section 3553(c)(1) of the Act, as a result of such bid protests?

1986: 212

1987: 319

1988: 372

3. How many contracts were suspended pursuant to Section 3553(d)(1) of the Act, as a result of such bid protests?

1986: 158

1987: 136

1988: 237

4. How many bid protests were dismissed as frivolous or invalid pursuant to Section 3553(a)(3) of the Act?

1986: 50

1987: 65

1988: 45

These statistics reflect only those cases which were summarily dismissed; they do not include those cases which were dismissed after development.

5. How many stays or suspensions were overridden by an agency because of "urgent and compelling circumstances which significantly affect interests of the United States" pursuant to Section 3553(c)(2) and 3553(d)(2) of the Act?

In 1986, there were 19 preaward protests where stays were overridden because of urgent and compelling circumstances under Section 3553(c)(2). In 1987, the number was 7; in 1988, there were also 7.

Furthermore, in 1986, there were 50 post-award protests where suspensions were overridden either because of urgent and compelling circumstances, or because of a determination that continued performance was in the government's best interest under Section 3553(d)(2). In 1987, there were 41; in 1988, there were 69.

6. How many bid protests were resolved pursuant to the "express option" established in Section 3554(a)(2) of the Act? What was the basis for the Comptroller General's use of the "express option" for these protests?

Our data base shows that we have granted express option in eight cases. The relatively small number of cases where we have formally granted express option treatment is the result of our practice of informally granting expedited treatment where the parties can agree to a shortened time schedule. We have found this practice to be superior because it allows our Office greater flexibility in setting briefing and decision schedules.

As far as the formal express option is concerned, our Bid Protest Regulations provide at Section 21.8 that it will be invoked in our discretion only in those cases suitable for resolution within 45 calendar days. We have made determinations on a case-by-case basis, taking into consideration a number of factors including: (1) whether the case posture is such that use of the express option could have a significant impact either on the protester's ability to obtain meaningful relief, or on the agency's need to expeditiously satisfy a requirement; (2) whether all parties would be able to submit the required material within the shortened deadlines under the express option; and (3) whether the issues are such that resolution within the shortened time frame under the express option is feasible.

7. How many bid protests were resolved by a settlement agreement between an agency and a protester (a) prior to a decision on the merits by the GAO; or (b) subsequent to a decision on the merits by the GAO? In how many of these cases, if any, did the agency pay money to the protester as a part of such settlement?

We do not have information concerning agency settlement agreements prior to a decision on the merits by our Office. Our procedures permit either party to moot a protest at any time during the proceedings, either through a dismissal when the protest becomes academic, or withdrawal of the protest. In other words, while agencies possibly may have entered into such agreements, this information is not furnished to our Office under CICA.

With respect to post decision monetary settlements that are reached without a specific award of costs by GAO, we also do not have information on them. However, we do have records concerning two protests which involved formal settlement agreements. In Sabreliner Corp., 64 Comp. Gen. 325 (1985), 85-1 CPD ¶ 280, we sustained a protest and recommended

termination of a contract and award to the protester. The protester filed a complaint in the United States District Court for the District of Columbia to compel agency compliance with our recommendation. This suit was settled by a monetary payment--we understand \$125,000--prior to a court decision on the matter.

In Presentations South, Inc., B-229842, Apr. 18, 1988, 88-1 CPD ¶ 374, an agency attempted to enter into a settlement agreement after our decision sustaining a protest. In this case, the agency wished to provide the protester with a monetary settlement because the agency had inadvertently failed to suspend contract performance pending resolution of the protest, making it impossible for the agency to implement our recommendation to conduct additional negotiations. The agency requested our approval of the proposed settlement and while we agreed that a settlement was appropriate, under the circumstances, we declined to approve that aspect of the proposed settlement which constituted payment for anticipated profits. Department of the Interior; Presentations South, Inc.--Request for Reconsideration, B-229842.3, Aug. 15, 1988, 88-2 CPD ¶ 148.

8. How many bid protests were simply dropped by the protester, without any settlement agreement, prior to a decision on the merits by the GAO?

In 1986, a total of 656 cases were dropped. Of these cases, 328 were withdrawn because of protester satisfaction with the agency response, and 120 were closed because the protester failed to comment on the agency report as required by our regulations.

In 1987, a total of 653 cases were dropped. Of these cases, 304 were withdrawn because of protester satisfaction with the agency response and 199 were closed because of failure to comment.

In 1988, a total of 660 cases were dropped. Of these cases, 340 were withdrawn because of protester satisfaction with the agency response and 220 were closed because of failure to comment.

9. How many stays or suspensions were in effect for less than 15 days? For 15 to 30 days? For 30 to 45 days? For 45 to 60 days? For 60 to 90 days? For more than 90 days? What was the average length of all stays and suspensions?

We do not have the data on the number of stays or suspensions within the various time frames. The figures below represent the average length of all stays and suspensions. There were no cases where the stay exceeded 90 days.

1986: 67.75 days

1987: 68.90 days

1988: 69.58 days

10. How many bid protests were sustained by the GAO? How many of these bid protests resulted in a recommendation that the agency terminate, recompete, or otherwise set aside the procurement in question pursuant to Section 3554(b)(1) of the Act?

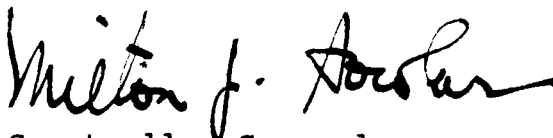
In 1986, we sustained 101 protests. Of these cases, 67 resulted in a corrective action recommendation as specified in your question. In the remaining 34 cases, we were unable to recommend corrective action but, generally, we awarded the protester either costs of pursuing the protest and/or bid or proposal preparation costs.

In 1987, 122 protests were sustained, 86 resulted in a corrective action recommendation and 36 resulted in only an award of costs.

In 1988, 90 protests were sustained, 64 resulted in a corrective action recommendation and 26 resulted in only an award of costs.

Also enclosed, as you requested, are copies of each annual report concerning our bid protest function which our Office has transmitted to Congress. We are ready to assist you with any additional information you may need.

Sincerely yours,

for 
Comptroller General
of the United States

Enclosures